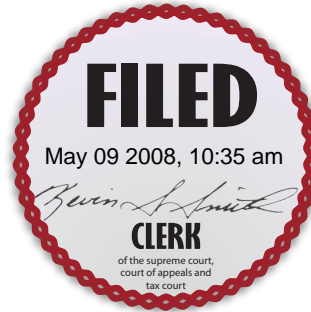


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

ROGER DAVIS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 79A02-0710-CR-858

APPEAL FROM THE TIPPECANOE CIRCUIT COURT
The Honorable Donald L. Daniel, Judge
Cause No. 79C01-0606-FC-40

May 9, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Roger Davis pled guilty to one count of operating a motor vehicle after driving privileges were forfeited for life¹ as a Class D felony. Davis received a six-year sentence, consisting of four years of incarceration, one year suspended to supervised probation, and one year suspended to unsupervised probation. He appeals, raising the following restated issue: whether the trial court abused its discretion in its consideration of mitigating circumstances.

We affirm.

FACTS AND PROCEDURAL HISTORY

On June 18, 2006, Davis was found operating a motor vehicle while his driving privileges had been forfeited for life under Indiana law. The State charged Davis with one count of operating a motor vehicle after driving privileges were forfeited for life as a Class D felony. Davis pled guilty to this charge pursuant to a plea agreement, which limited the trial court's sentencing discretion to a maximum executed sentence of four years.

At the sentencing hearing, the trial court found Davis's guilty plea and his completion of the Thinking for A Change Program² as mitigating circumstances. However, it also found Davis's extensive criminal history and history of illegal alcohol and drug use with a likelihood to re-offend as aggravating circumstances. The trial court described Davis's criminal record as consisting of four misdemeanor convictions and

¹ See IC 9-30-10-17.

² Thinking for A Change is a cognitive-behavioral program through the Indiana Department of Correction aimed at changing criminal behavior by changing attitudes, beliefs, and thinking patterns. [Hhttp://www.in.gov/indcorrection/programs/thinkingforHchange.htm](http://www.in.gov/indcorrection/programs/thinkingforHchange.htm).

three felony convictions. In balancing the aggravating circumstances against the mitigating circumstances, the trial court sentenced Davis to six years, requiring four years to be executed, one year suspended to supervised probation, and one year suspended to unsupervised probation. He now appeals.

DISCUSSION AND DECISION

Davis claims that the trial court abused its discretion in failing to consider other mitigating circumstances. Specifically, Davis contends that the effects from a recent back surgery caused him considerable impairment and his condition required significant medical care that would be difficult to treat adequately in a prison setting, “making incarceration an undue hardship for him.” *Appellant’s Br.* at 5. He argues that the record clearly supported his medical condition being serious and requiring significant medical care. *Id.* at 6. Consequently, Davis asserts that the trial court erred by overlooking his medical condition and failing to consider it as a mitigating circumstance when sentencing him. *Id.* at 7-8.

Sentencing decisions rest within the sound discretion of the trial court and are reviewed only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007) (citing *Smallwood v. State*, 773 N.E.2d 259, 263 (Ind. 2002)). If the sentence is within the statutory range, it is subject to review only for an abuse of discretion. *Id.* An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances and the reasonable inferences drawn therefrom. *Id.* Indiana trial courts are required to enter sentencing statements whenever imposing sentence for a felony offense. *Id.* This statement must include “a reasonably detailed recitation of the

trial court's reasons for imposing a particular sentence," and "[i]f the recitation includes a finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating." *Id.* The trial court's assignment of relative weight or value "to reasons properly found or those which should have been found is not subject to review for abuse." *Id.* at 491.

When a defendant alleges that the trial court failed to identify a mitigating circumstance, he is required to establish that the mitigating evidence is both significant and clearly supported by the record. *Carter v. State*, 711 N.E.2d 835, 838 (Ind. 1999). The trial court is not obligated to find the existence of mitigating factors. *Id.* "If the trial court does not find the existence of a mitigating factor after it has been argued by counsel, the trial court is not obligated to explain why it has found that the factor does not exist." *Fugate v. State*, 608 N.E.2d 1370, 1374 (Ind. 1993) (citing *Hammons v. State*, 493 N.E.2d 1250, 1254 (Ind. 1986)).

Here, Davis argues that his medical condition is analogous to the circumstances in *Moyer v. State*, 796 N.E.2d 309, 314 (Ind. Ct. App. 2003), where we held that the trial court abused its discretion in not considering, as a mitigating circumstance, the undue hardship incarceration would have on the defendant because of his cancer and pulmonary disease. *Appellant's Br.* at 5. However, as Davis acknowledges, we have found no abuse of discretion when the trial court did not consider a defendant's medical conditions, which failed to require significant medical care and were treatable by medication during incarceration, as a mitigating circumstance. *Appellant's Br.* at 4-5; *See Henderson v.*

State, 848 N.E.2d 341, 344 (Ind. Ct. App. 2006) (defendant unsuccessfully argued her illnesses of depression, anxiety, acid reflux, bladder prolapse, hyperthyroidism, hypertension, and arthritis of the shoulder required significant medical care and would be untreatable during incarceration).

Davis's medical condition required him to take pain medication. In addition, Davis was prescribed a rolling walker to use while recovering from his surgery. There is no evidence in the record indicating that these remedies cannot be provided to Davis during incarceration or that his medical condition would render incarceration an undue hardship on him. We recognize Davis's need for medical care relating to his recovery from back surgery; however, we are confident that Davis's medical needs are treatable during his incarceration. Accordingly, we conclude that the trial court did not abuse its discretion in not considering Davis's medical condition as a mitigating circumstance.

Affirmed.

RILEY, J., and MAY, J., concur.